

## MEMORANDUM

DATE: June 29, 2007

TO: Ms. Sharon L. Summers, DMMA  
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 10 DE Reg. 1781 [Proposed Long Term Care Annuity Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend its regulations regarding the treatment of annuities provisions published as 10 DE Reg. 1781 in the June 1, 2007 issue of the Register of Regulations. As background, SCPD commented on a previous version of these regulations in November 2006 [10 DE Reg. 798 (November 1, 2006)]. Those regulations became final in April 2007 [10 DE Reg. 1601 (April 1, 2007)]. DMMA is now issuing a proposed regulatory amendment based on "additional guidance received from the Centers for Medicare and Medicaid Services (CMS)".

The only proposed change is to amend one sentence as follows: "DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource." Although not a paragon of clarity, it appears that there would no longer be a requirement that annuities be sold. Rather, the fair market value of the annuity income stream would be counted as a resource.

SCPD could not locate any new CMS guidance in this context, but is attaching the CMS State Medicaid Director letter on annuities issued July 27, 2006 which suggests that states should consider annuities as resources in determining eligibility. See Section I.D.

Since the amendment appears to favor consumers by no longer requiring outright sale of the annuity, and counting the annuity as a resource appears supported by CMS guidance, SCPD endorses the concept of the proposed regulation.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Harry Hill  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

